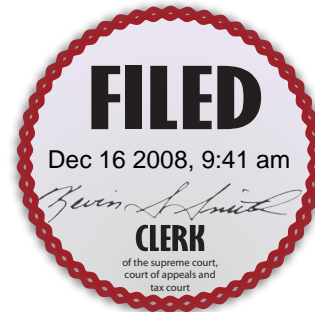


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ELBERT M. JONES II,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 02A03-0808-CR-398

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable John F. Surbeck, Jr., Judge  
Cause No. 02D04-0709-FC-235

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**December 16, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BRADFORD, Judge**

Following a jury trial, Appellant-Defendant Elbert M. Jones II was convicted of Class C felony Battery<sup>1</sup> and acquitted of Domestic Battery, a Class A misdemeanor.<sup>2</sup> Upon appeal, Jones claims that the verdicts are inconsistent. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

After dating for over a year, Jones and Tiffany Jimenez moved into a Fort Wayne apartment together in July or August of 2007. Shortly thereafter, Jones and Jimenez ended their relationship. On September 14, 2007, Jimenez, who was six months pregnant, and two friends arrived at Jones's apartment to retrieve her personal belongings. While Jones spoke privately with Jimenez in the bedroom, Jimenez's friends waited outside of the closed door. Jones informed Jimenez that he had "moved on." Tr. p. 127. When Jimenez became upset, Jones grabbed her arm, pushed her onto the bed, choked her, and pulled her out of the bedroom. One of Jimenez's friends attempted to intervene, but Jones said, "I'll beat you're a\*\* too." Tr. p. 170, 242. Jones pulled Jimenez out of the apartment using a "full nelson" hold. Tr. p. 263. Jimenez called the police, and Jones left the apartment with his friends.

Fort Wayne Police Officer Shane Coleman responded. Officer Coleman observed Jimenez crying and noticed that a bruise was forming on her right arm. Jimenez complained of pain to her neck and arms. Jimenez informed Officer Coleman that Jones had grabbed her neck, choked her, and thrown her onto the bed. Jimenez also indicated

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<sup>1</sup> Ind. Code § 35-42-2-1 (2007).

<sup>2</sup> Ind. Code § 35-42-2-1.3 (2007).

that she was pregnant with Jones's child. Although Jones was not present at the scene when Officer Coleman arrived, Jones was arrested a few hours later.

On September 19, 2007, the State charged Jones with battery and domestic battery. At a March 25-26, 2008, trial, a jury found Jones guilty of battery and acquitted him of domestic battery. Jones moved for judgment notwithstanding the verdict, but the motion was denied. A sentencing hearing was held on April 21, 2008, during which the trial court sentenced Jones to four years, all suspended, with two years suspended to probation. This appeal follows.

### **DISCUSSION AND DECISION**

On appeal, Jones argues that it is impossible to reconcile the not-guilty verdict in the domestic battery with the guilty verdict in the battery. He asserts that the verdicts are hopelessly inconsistent because "the charges are essentially the same." Br. of Appellant at 7. When reviewing claims of inconsistent jury verdicts, "we will take corrective action only when the verdicts are extremely contradictory and irreconcilable." *Powell v. State*, 769 N.E.2d 1128, 1131 (Ind. 2002). A jury's verdict may be inconsistent or even illogical but nevertheless permissible if it is supported by sufficient evidence. *Id.* In resolving such a claim, we do not interpret or speculate about the thought processes or motivation of the jury in reaching its verdict. *Id.* Further, an acquittal on one count and a conviction on another will survive a claim of inconsistency if there is sufficient evidence to support the conviction. *Id.*; *Hodge v. State*, 688 N.E.2d 1246, 1248-49 (Ind. 1997).

In order to prove that Jones committed Class C felony battery, the State was required to prove that he: (1) knowingly or intentionally, (2) touched Jimenez, (3) in a

rude, insolent, or angry manner, (4) resulting in bodily injury, (5) while Jimenez was pregnant, and (5) he knew that Jimenez was pregnant. Ind. Code § 35-42-2-1. Here, Jimenez testified that Jones grabbed her arm, choked her, and pushed her onto the bed, causing bruising and pain to her arm, with the knowledge that she was pregnant. This evidence is sufficient to sustain Jones's conviction for battery. Therefore, we conclude Jones's conviction for battery is not inconsistent with his acquittal for domestic battery.<sup>3</sup>

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and MAY, J., concur.

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<sup>3</sup> In acquitting Jones of domestic battery, it is possible that the jury concluded the State did not prove the "child in common" element of the domestic battery charge. The jury was within its discretion to "have doubted the weight or credibility of the evidence presented in support of this distinguishing element." *Neuhausel v. State*, 530 N.E.2d 121, 123 n.2 (Ind. Ct. App. 1988).